IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Revn. No. 586 of 2007
Date of Decision : November 28, 2007.

Des Raj and others .... Petitioners

Vs.

State of Punjab and another .... Respondents

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr.G.S.Gandhi, Advocate
for the petitioners.

Ms.Manjari Nehru, DAG, Punjab
for respondent no.1.

Mr.N.K.Sanghi, Advocate
for respondent no.2.

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L.N.MITTAL, J. (Oral) :

Des Raj and his sons Vijay Kumar and Jugal Kishore have filed the instant criminal revision petition assailing order dated 01.03.2007 of learned Additional Sessions Judge, Barnala whereby the petitioners have been summoned as additional accused on prosecution application under Section 319 of the Code of Criminal Procedure (in short – the Code).

Marriage of Manju – since deceased was held with Rajinder Kumar in February 2004. Prior to this marriage, Rajinder Kumar was a widower, having a son and a daughter from his first wife, whereas Manju

was a divorcee. Manju died unnatural death on 31.05.2005 i.e. just after 15 months of her marriage with Rajinder Kumar. Respondent no.2-complainant – Subhash Chander Verma, Advocate is brother of Manju. He lodged FIR against the petitioners and Rajinder Kumar alleging that all of them had been demanding dowry and had been harassing the deceased for the same and had also been harassing her for not bearing a child. The police, after investigation, found the petitioners to be innocent but presented report under Section 173 of the Code for prosecution of Rajinder Kumar alias Titu alone. Charge under Section 304-B and in the alternative under Section 306 of the Indian Penal Code was framed against Rajinder Kumar alias Titu. During trial, respondent no.2 appeared as witness and repeated his allegations against Rajinder Kumar, as well as, against the petitioners. After part-cross examination of respondent no.2, application under Section 319 of the Code was moved by the prosecution and thereupon by impugned order dated 01.03.2007, the petitioners have been summoned as additional accused. Petitioners are father and brothers of Rajinder Kumar.

It may be noticed that Rajinder Kumar alias Titu has since committed suicide.

Learned counsel for the petitioners emphatically argued on the basis of Ration Cards (Annexures P-1 to P-3) that all the three petitioners are residing separately from one another, as well as, from Rajinder Kumar. However, on behalf of the prosecution, reliance has been placed on a judgment in the case of ***State of Orissa vs. Debendra Nath Padhi*** reported as ***2005 (1) S.C.C. 568*** and it is contended on the basis thereof that these documents, filed on behalf of the petitioners, cannot be looked into at this stage. There is considerable merit in the argument. It has been categorically laid down by the Hon'ble Apex Court that at the stage of framing of charge or taking cognizance, accused has no right to produce any material. Learned counsel for the petitioners countered this argument by

submitting that this is neither stage of framing of charge nor stage of taking cognizance. This contention of learned counsel for the petitioners is devoid of substance because in various decisions, submitted by learned counsel for the petitioners himself, it has been held that on passing of order under Section 319 of the Code, for summoning of additional accused, cognizance of offence is taken against him at that stage. So, passing of order under Section 319 of the Code is the stage of taking cognizance against the petitioners.

In addition to the aforesaid, these Ration Cards do not help the petitioners to prove that they were residing separately from the deceased and her husband. Learned counsel for the petitioners himself referred to inquiry report (Annexure P-7), wherein it has been observed that petitioner no.1 Des Raj is residing with his son Jugal Kishore (petitioner no.3). It is also so mentioned in application Annexure P-6, moved by wife of petitioner no.2 Vijay Kumar. Thus, it is evident that in spite of petitioners no.1 and 3 residing together, even according to the documents placed on record by the petitioners themselves, there are separate Ration Cards for petitioners no.1 and 3. Consequently, merely on the basis of Ration Cards, it cannot be said at this stage at least, that all the petitioners were residing separately from the deceased and her husband. Here it has to be noticed that Annexures P-1 to P-3 do not have the names of the members, for which these Ration Cards have been obtained. Moreover, all these Ration Cards are of the same address and therefore also, it cannot be said that the petitioners were residing separately from the deceased and her husband. It may also be added that at this stage, even if the petitioners were residing separately from the deceased and her husband but in vicinity, it cannot be said that they could not have made demand of dowry or harassed the deceased.

Learned counsel for the petitioners next contended that respondent no.2, in his cross-examination, has admitted that a suicide note was recovered from the blouse of the deceased. It was submitted that the

said suicide note is Annexure P-5, addressed to the husband and also at the end, addressed to respondent no.2 and his another sister. In suicide note Annexure P-5, there is also reference to another letter kept in the purse of the deceased. It was contended that the said letter is Annexure P-4. On the basis of Annexures P-4 and P-5, it was emphatically argued that the petitioners are completely innocent. The argument, on the face of it, appears to be very forceful, but on proper scrutiny, cannot be accepted. Firstly, these documents placed on record on behalf of the petitioners cannot be taken into consideration at this stage, as already discussed above, and secondly, learned counsel for the complainant has pointed out that these suicide notes are yet to be proved. It was contended that even if note Annexure P-5 was recovered from the blouse of the deceased, the possibility of the same being placed there by the petitioners or Rajinder Kumar cannot be ruled out. Moreover, these suicide notes do not exonerate the petitioners or Rajinder Kumar. On the contrary, the deceased has expressed her anguish in these suicide notes and showed her benevolence by requesting that the petitioners or Rajinder Kumar may not be held liable. In Annexure P-4, she has observed in between as under :-

> ***"My beloved elder pap, Babu Ji. It is my request to you, if some thing mishappens with me, in that, my husband or his family members are not at fault because I was feeling very much ashamed from myself because neither I could become a mother by giving a birth to a child.***
>
> ***xx xx xx xx***
>
> ***Despite my best, I can not give happiness to any one.***
>
> ***xx xx xx xx***
>
> ***As I have no power of tolerance that I should hear the taunts of the people. I have seen every***

thing in the world.

xx xx xx xx

Hey God, either give me a child or death. It will be an act of kindness on me. You send for me."

In Annexure P-5 also, it has similarly been mentioned in between as under :-

"I have no tolerance. I am going for ever. To the God, who has betrayed me every time, I will inquire from him as to what kind of mistake I have committed for which I have been penalized so badly.

xx xx xx xx

Your and my relations are only upto this life time and after that no one belongs to any one.

xx xx xx xx

My brother and sister, please all of you to pray so that I may not take rebirth on this universe. My mother, my dear mother, please excuse me."

These recitals in the suicide notes Annexures P-4 and P-5 go to show that the deceased was being taunted for not bearing a child. Her tolerance stood exhausted. She tried her best to give happiness to everyone but could not, possibly on account of being barren. She therefore blamed herself and requested that everybody else be excused. So, these suicide notes do not show that the deceased had not been subjected to cruelty. Learned counsel for the petitioners contended that according to the suicide notes, the deceased also could not prove to be a good mother to the son and daughter of Rajinder Kumar from his first wife. However, in this regard also, perusal of Annexure P-4 would reveal that she tried her best to give love to the two children but as is usual, the children were not happy with the step-mother. So, the so-called suicide notes also do not help the petitioners,

at least at this stage.

Learned counsel for the petitioners also referred to application Annexure P-6 moved by Veera Wali – wife of petitioner no.2. However, a bare reading of this application would show that it was drafted on legal advice. In any event, the allegations made in the said application have to be proved in the defence, and not at this stage.

Learned counsel for the petitioners also referred to order dated 14.02.2006, regarding bail granted to Rajinder Kumar as reproduced in the instant revision petition and contended that according to observation in the said order, it was a case of suicide. However, even in the case of suicide, charge under Section 304-B or 306 of the Indian Penal Code would be made out.

Learned counsel for the petitioners also submitted that the petitioners were found innocent by the police and also in the subsequent inquiry conducted by Crime Branch vide report Annexure P-7. However, as regards Inquiry Report Annexure P-7, submitted during pendency of the case in the Sessions Court, the same can, at best, be used by the petitioners in defence. As regards investigation report under Section 173 of the Code, provisions of Section 319 of the Code has been enacted for such situation. Investigation Report of the police may not be final in some cases. If there is evidence against the petitioners, they can certainly be summoned under Section 319 of the Code.

Learned counsel for the petitioners relying on some judgments in the cases of ***(i) Mohd. Shafi vs. Mohd. Rafiq and another*** reported as ***JT 2007 (5) SC 562, (ii) Hukam Chand and another vs. State of Haryana and another*** reported as ***2007 (3) RCR (Criminal) 141, (iii) Lok Ram vs. Nihal Singh*** reported as ***2006 (2) RCR (Criminal) 707, (iv) Michael Machado and another vs. Central Bureau of Investigation and another*** reported as ***2000 (2) RCR (Criminal) 75*** and ***(v) Netai Dutta vs. State of West Bengal*** reported as ***JT 2005 (3) SC 46*** has contended

that additional accused under Section 319 of the Code can be summoned only if there is all likelihood of their conviction. However, to controvert this contention, learned counsel for the complainant has relied upon a judgment in the case of ***Rajendra Singh vs. State of U.P. and another*** reported as ***2007 (3) RCR (Criminal) 1021***. It has inter alia been held therein that the view that power under Section 319 of the Code can be exercised sparingly or in exceptional circumstances, is not tenable. It has also been held that the Court need not be satisfied that the additional accused has committed an offence but it is sufficient if it only appears to it that he has committed an offence. Thus, at this stage, there may or may not be all likelihood of conviction but it would be sufficient for the purpose of Section 319 of the Code if there appears to be a case for proceeding against the petitioners that they have committed some offence. The statement Annexure P-9 of respondent no.2, made during trial, is categorical against the petitioners as well. On the basis of said statement, there appears to be sufficient ground to proceed against the petitioners as well.

Learned counsel for the petitioners contended that the learned trial court while passing the impugned order has not applied its mind. This argument can also not be accepted because contentions raised before the trial court have been dealt with in the impugned order.

In view of the aforesaid, I find no merit in the instant revision petition. The same is accordingly dismissed. It is, however, expressly made clear that nothing observed herein shall be deemed to be an expression of opinion on the merits of the case, so as to prejudice either side during trial.

November 28, 2007 **(L.N.MITTAL)**
monika **JUDGE**